- We are family law specialists working exclusively in the area of family law.

- We have a long standing and dedicated history of pro bono work, including assisting families with transgender children with their legal needs. We have acted on behalf of the Applicant in many cases involving applications for gender dysphoria treatment for the child of the relationship/marriage.

- Initially these applications were made where both parties (the parents) consented to the treatment in accordance with the recommendations of the child's treating practitioners (usually from the Royal Children's Hospital Gender Service in Melbourne) but where, legally, approval for treatment was still required by the Federal Circuit and Family Court of Australia (FCFCOA) as it was considered a special medical procedure. These were positive cases to be involved in and we generally acted on a pro bono basis to assist the parties to obtain the necessary court approval as quickly as possible and to alleviate the emotional and financial impact of involvement in the Court process even though all parties were in agreement as to the proposed treatment.

- The progress of the case law regarding these matters was also positive noting that:

    - In Re Jamie [2013] FamCAFC 110 the Full Court held that Court authorisation was unnecessary for stage one treatment but that the nature of the stage two treatment required the Court to determine that the child is "Gillick competent". The Court accepted the evidence of Jamie's parents and treating doctors that Jamie met the diagnostic criteria for gender dysphoria and was Gillick competent.

    - In the decision of Re Kelvin [2017] FamCAFC 258 the majority of the Full Family Court of Australia held that adolescents with gender dysphoria who have parental consent and medical support no longer required court approval or a determination that they are Gillick competent to undergo stage 2 treatment.

      The decision was seen as bringing the law into closer alignment with medical science and the treatment of young people with gender dysphoria and removing one of the many barriers faced by young transgender people in Australia to transition.

      The Court recognised that where the diagnosis results from a proper assessment, the proposed treatment aligns with best practice guidelines and parents and doctors are in agreement, this is an issue more appropriately determined in the medical realm. The impact of the considerable cost and delay associated with court processes on young transgender people and their families was of itself "a significant pointer to this court holding that there is no role for courts in the process, absent a dispute between parents or between parents and doctors".

      Our group acted on behalf of an intervenor in Re Kelvin.

- The impact of these cases means that we now only act where a party (the Applicant) is required to seek Court Orders for treatment for the child in circumstances where the other parent does not consent. Typically, this is in circumstances where the parents are separated and, in our experience, the

Applicant is usually the mother who has primary care of the child and typically has a better understanding of the needs of the child.

- Typically, cases where parents cannot agree on major long-term decisions, such as a child's education or health, will result in one parent obtaining sole parental responsibility. In cases regarding health, the Court may be asked to determine the dispute between the parents such as immunisations of a child, including COVID-19 vaccinations, or medication/treatment for a child diagnosed with autism/ADHD or other neurodiverse conditions, or more serious illnesses. In these cases, given the Judges are not medical practitioners, when determining what is in the child's best interests, they are assisted by the expert evidence of the child's particular treaters and their recommendations. This may include GPs, paediatricians and/or other specialists.

- The Royal Children's Hospital Gender Service in Melbourne is a Victorian statewide service and takes referrals for any child up to the age of 16 years with concerns regarding their gender identity. The Service "aims to improve the physical and mental health outcomes of children and adolescents who are trans or gender diverse" noting that "some trans or gender diverse children and adolescents experience gender dysphoria" which is "a medical term that refers to the distress that a person may experience when there is an incongruence between their gender identity and their gender assigned at birth". https://www.rch.org.au/adolescent-medicine/gender-service/

- The Gender Service created and follows the Australian Standards of Care and Treatment Guidelines for trans and gender diverse children and adolescents authored by Associate Professor Michelle Telfer, Dr Michelle Tolit, Dr Carmen Pace and Associate Professor Ken Pang. https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/australian-standards-of-care-and-treatment-guidelines-for-trans-and-gender-diverse-children-and-adolescents.pdf

- The Royal Children's Hospital is highly regarded in the State (and the country) and the Gender Service similarly considered unique in its expertise and service. The Service has come under some criticism since it opened in 2003, including attacks in *The Australian*. In 2020 the then Minister for Health Greg Hunt confirmed that he had sought advice from the Royal Australasian College of Physicians about the need for an inquiry into the treatment of gender dysphoria and that the advice was "clear" that "limiting healthcare for such a vulnerable group would be unethical" and that "a national inquiry would not increase the scientific evidence available regarding gender dysphoria but would further harm vulnerable patients and their families though increased media and public attention". https://www.smh.com.au/lifestyle/health-and-wellness/staying-on-her-feet-how-michelle-telfer-won-gender-clinic-battle-20200416-p54kjf.html

- However, we have observed an ongoing and deliberate attempt within the legal profession (specifically family law) to continue to undermine the current gender affirming care model, including the specific work of the expert practitioners at the RCH via the legal system, which has had a significant impact on the way that applications involving gender dysphoria are run in the FCFCOA and the outcomes of those proceedings as set out below.

- In April 2023 a paper was presented by a Melbourne family law barrister to the judges of the FCFCOA titled "Reassessing the approach to gender dysphoria cases". The same paper/information has been presented at various family law firms https://www.khq.com.au/legal-blog/reassessing-approach-gender-dysphoria-cases/

- In the paper it is argued that the FCFCOA must reassess its approach in gender dysphoria cases and should reconsider treating the case of Re Kelvin as the authority.

- A subsequent paper was prepared, by the same author, titled "Gender questioning children and family law: an evolving landscape, paper for the Australian Family Law profession" in May 2023. The paper was added to the "Our Duty" group website being a US based "international support network for parents who wish to protect their children from gender ideology" being "a set of ideas that is leading many children to think that they are transgender". https://ourduty.group/wp-content/uploads/2023/07/Paper-for-the-Family-Law-Profession-Gender-Identity-in-children-and-adolescents-May-2023.pdf

- The author also presented to the medical profession including the Royal Australian and NZ College of Psychiatrists Faculty of Adult Psychiatry conference in 2023 on the topic of gender dysphoria.

- Family law practitioners then received an invitation to a seminar on 14 August 2023 hosted by the Victorian Family Law Bar Association (and published as being a component of the Victorian Bar CPD program and 1 CPD point in substantive law and chaired by a Judge of the FCFCOA) on the topic "Gender Dysphoria, children and adolescents: update for lawyers".

- The synopsis read:

  > "The treatment of gender dysphoria is a complex and contested area. Since the decisions of RE Jamie (2013) and Re Kelvin (2017) the medical evidence has been evolving rapidly. This seminar will discuss what are the current issues facing lawyers, parents and the Courts when coming to grips with this issue".

  https://www.vicbar.com.au/members/cpd/gender-dysphoria-children-and-adolescents-update-lawyers

- On the face of it, this appeared to be a typical CPD presentation on an interesting topic relevant to family law practitioners, that is, the current status of the law relating to gender dysphoria cases as presented by the reputable Bar Association and chaired by a Judge of the FCFCOA. We are aware that the event 'sold out'.

- However, in reality, it was a further attempt to "inform" the family law profession that the Court ought to reassess its approach in gender dysphoria cases and to rely on specific medical professionals to cast doubt on the gender affirming model of care endorsed by the RCH.

    - Dr Alison Clayton is an Australian psychiatrist and affiliated with SEGM (Society For Evidence Based Gender Medicine - US based organisation) and has written a number of articles which are critical of the gender affirming model. https://segm.org/Placebo-effects-of-gender-affirmative-care

      These include:

        - The Gender Affirmative Treatment Model for Youth with Gender Dysphoria: A Medical Advance or Dangerous Medicine in which she compares the current model of affirmative care for gender dysphoria to documented dangerous, even abusive, medical procedures that, in their time, were well received and applauded by the scientific community as well as the general public such as the abuse of lobotomies and malaria fever therapy.

        - The Signal and the Noise -questioning the benefits of puberty blockers for youth with gender dysphoria
        - Parental consent and the treatment of transgender youth: the impact of Re Imogen
        - Commentary on Levine: A tale of two informed consent processes
        - Gender affirming treatment of gender dysphoria in youth: a perfect storm environment for the placebo effect, the implications for research and clinical practice
        - https://www.researchgate.net/profile/Alison-Clayton-2

    - John Blyth is a child psychologist based in Sydney, NSW who has linked mental health or neurodiversity issues with gender dysphoria and promotes an "evidence based" treatment, assessment and diagnosis as compared to the affirmative model of care.

- The impact of these presentations to the profession has had a significant impact on how family lawyers across States, including practitioners, Independent Children's Lawyers and the judiciary, now approach these matters as set out below:

    - In our view it is detracting from the Court's role to determine, as the paramount consideration, what is in the best interests of the particular child in the particular case having regard to all of the relevant factors under the "best interests" principles of the Family Law Act 1975.

    - Proceedings of this nature ought to be determined urgently given that they are time sensitive in terms of the child's health and stage of puberty. However, we are seeing matters being listed for some weeks, primarily due to the growing number of 'experts' that the Court is being asked to hear from (and which oppose the child's treating medical practitioners who have made the diagnosis of gender dysphoria).

    - This not only causes significant delay to the resolution of the proceedings but comes at an enormous expense to the parties who are meeting both lawyer's fees and barrister's daily rates to appear. We continue to provide pro bono assistance wherever possible to assist with the significant cost however we are unable to meet disbursements such as barrister's fees and have been forced to ask barristers to appear at reduced rates or pro bono.

    - There are very few families that have the financial means to litigate in the FCFCOA from their personal resources, let alone fund the costs of lengthy trials. The manner in which these cases are being deliberately extended is presenting a barrier to justice as parents simply cannot afford to litigate the issue unless they are fortunate enough to secure pro bono funding. While we assist where we can, we do not have the capacity to assist every applicant who may wish to pursue gender affirming care for their child in the absence of consent from the other parent.

    - Rather than simply rely on the treating practitioners of the particular child the subject of the proceedings and their expert evidence, further and additional "expert evidence" is being filed and relied on by not only the Respondent but the Independent Children's Lawyer too. These experts are typically the same being put forward in numerous cases (across States) who are providing "expert" reports without ever having met the child in question (including Alison Clayton and John Blythe as well as Dylan Wilson - a paediatrician who has written to Australian doctors about his views on the 'problems with gender affirmative pathway for children' -

and others). It is very concerning to have observed the role of the ICL also be impacted and, in our view, their 'independence' compromised.

- The family law system is being used to push a personal view about how gender dysphoria ought be diagnosed and/or treated without reference to the particular child in question and their individual needs. It is an attack on the medical approach to gender dysphoria which ought not be done via individual cases in the FCFCOA noting that whilst Judges of the Court are undoubtedly legal experts, they have no medical training and yet are being asked to evaluate differing medical opinion and approaches.

- From time to time, the FCFCOA does deal with cases where there may be a divergence of opinion between the child's parents as to medical issues. Most recently, this has occurred in the context of Covid-19 vaccinations for children as well as the appropriate treatment for children diagnosed with ADHD / autism spectrum disorder. In the overwhelming majority of cases where Judges have been required to make decisions as to medical treatment (other than in the case of gender affirming care) these cases are dealt with promptly, expeditiously and with an acknowledgment that the child's medical treaters are the most appropriate professionals to be providing recommendations for appropriate care for the child.

- The current approach is effectively prohibiting access to justice for young transgender people and the Applicant parent and, in our view, is an abuse of process. It means that, for separated parents in particular, making an application to the Court may be cost prohibitive and emotionally exhausting and/or distressing for the Applicant and/or the child.

- The attack on the expertise of the child's medical treaters, including those from the RCH Gender Service, has seen the commitment, professionalism and skills of these professionals questioned, undermined and criticised. Their evidence is crucial to the success of the proceedings however it is increasingly difficult to request that they prepare lengthy reports and be available for cross examination (which can last for days) during a final hearing. As a result, they are more reluctant to be involved.

- We are aware of people accessing treatment via the 'black market' as a way of avoiding lengthy, costly and difficult legal proceedings where one parent objects to treatment.

- As legal professionals we are deeply concerned as to the current treatment of parents of transgender children in our Court system and the discriminatory and overwhelming barriers to accessing justice that they face as a result of recent developments.

DATED: 17 April 2024

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